Second Session - Thirty-Seventh Legislature

of the

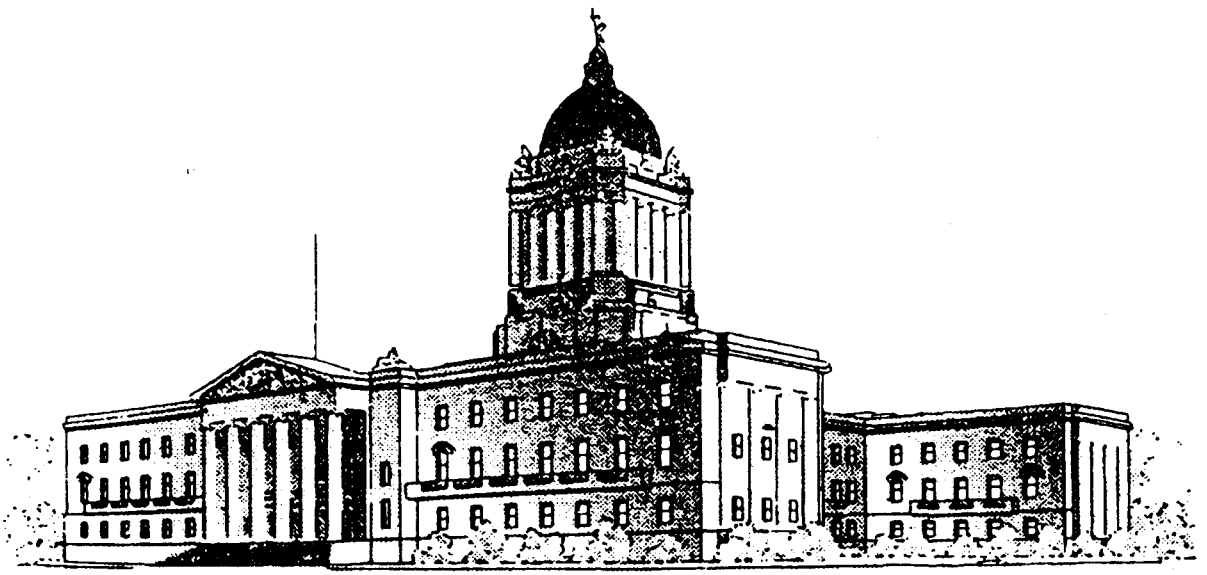
Legislative Assembly of Manitoba

Standing Committee

on

Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows



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Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 28, 2001

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

VICE-CHAIRPERSON – Ms Linda Asper (Riel)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Ashton, Lemieux, Mackintosh

Ms. Allan, Ms. Asper, Mr. Cummings, Mrs. Dacquay, Messrs. Martindale, Praznik, Reid, Reimer

Substitutions:

Ms. Korzeniowski for Hon. Mr. Lemieux at 11:11 a.m.

WITNESSES:

Bill 37–The Inter-jurisdictional Support Orders Act

Ms. Paula Mallea, Private Citizen

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act (2)

Mr. Josh Weinstein, Manitoba Association of Rights and Liberties

Bill 35–The Improved Enforcement of Support Payments (Various Acts Amended) Act

Mr. John Stefaniuk, Canadian Bankers Association

Bill 46–The Provincial Court Amendment and Court of Queen's Bench Amendment Act

Mr. Robb Tonn, Provincial Judges Association of Manitoba

MATTERS UNDER DISCUSSION:

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act (2)

Bill 35–The Improved Enforcement of Support Payments (Various Acts Amended) Act

Bill 37–The Inter-jurisdictional Support Orders Act

Bill 46–The Provincial Court Amendment and Court of Queen's Bench Amendment Act

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Mr. Chairperson: Good morning. Will the Standing Committee on Law Amendments please come to order. This morning the committee will be considering the following bills: Bill 33, The Highway Traffic Amendment and Consequential Amendments Act (2); Bill 35, The Improved Enforcement of Support Payments (Various Acts Amended) Act; Bill 36, The Enhanced Debt Collection (Various Acts Amended) Act; Bill 37, The Inter-jurisdictional Support Orders Act; Bill 46, The Provincial Court Amendment and Court of Queen's Bench Amendment Act; Bill 49, The Statutes Correction and Minor Amendments Act, 2001.

We have presenters who have registered to make public presentations on bills 33, 35, 37 and 46. It is the custom to hear public presentations before consideration of bills. Is it the will of the committee to hear public presentations on the bills, and, if yes, in what order do you wish to hear the presenters?

Some Honourable Members: Agreed. Out-of-town first.

Mr. Chairperson: Out-of-town first. I will then read the names of the persons who have registered by bill: No. 33, Josh Weinstein,

representing the Manitoba Association of Rights and Liberties; Bill 35, Paula Mallea, and John Stefaniuk, representing the Canadian Bankers Association; Bill 37, Paula Mallea; Bill 46, Robb Tonn and Linda Giesbrecht, representing the Provincial Judges Association of Manitoba. Those are the persons and organizations that have registered so far.

If there is anybody else in the audience that would like to register, or who has not yet registered and would like to make a presentation, would you please register at the back of the room. Just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please see the Clerk of this committee.

We also have someone registered to speak to both bills 35 and 37, who is from out of town. Is it the will of the committee to hear from the out-of-town presenters first? *[Agreed]*

The name of the out-of-town presenter is Paula Mallea, private citizen. Before we proceed with the presentations, is it the will of the committee to set time limits on presentations?

Ms. Nancy Allan (St. Vital): I would like to suggest that we have 15 minutes for presentation and 5 minutes for questions.

Mr. Chairperson: It has been suggested that we have 15 minutes for presentations and 5 minutes for questions. *[Agreed]*

How does the committee propose to deal with presenters who are not in attendance today but have their names called? Shall these names be dropped to the bottom of the list? *[Agreed]*

Shall the names be dropped from the list after being called twice? *[Agreed]*

As a courtesy to persons waiting to give a presentation, does the committee wish to indicate how late it is willing to sit this morning?

Ms. Allan: I would like to suggest till noon.

Mr. Chairperson: It has been suggested we sit till noon. Agreed? Agreed. Unless we finish sooner.

We will now proceed with public presentations. We are going to start with the out-of-town presenter, Paula Mallea, who is going to present on Bill 35 and Bill 37. We will hear both your presentations.

Bill 37–The Inter-jurisdictional Support Orders Act

Ms. Paula Mallea (Private Citizen): Thank you for accommodating my having come a distance today, and hello to all of the committee members. I have a single presentation to make, and I would simply ask that it be adopted with respect to Bill 37, if that is agreeable, since they applied mainly to the same kinds of issues that I have come to address. I am here as a private citizen because there really was not time for me to obtain endorsements from the women's groups with whom I work. The Brandon's Women's Centre, Women for Equality, are among those. I have spoken privately with some of the equality-seeking women that I know in the province who wish, with me, to congratulate the Government on both of these pieces of legislation. These will go very far to assisting women who are at an extreme disadvantage, often both during their marriages and after separation or divorce, financially and otherwise.

So we welcome these pieces of legislation, and I also just want to remark that, at this time, they are very timely pieces of legislation, I am sure, because the Province is also engaged in a process of consultation that is taking place across the nation right now, together with the territorial and federal governments, that there are discussions being held with groups from coast to coast to coast with respect to the possibility of amending the Divorce Act. A large number of women's groups have boycotted these meetings, including ours, and we have done so because of the nature of the materials that are being presented to people who are attending those meetings and because of the implications one might draw from where we expect that legislation to go when it is finally drafted.

You will recall that this arose first in the media spotlight with the committee headed by

Senator Ann Cools, which travelled the country in which women's groups who wished to present the position of women in situations of separation and divorce were heckled, intimidated and otherwise treated with considerable contempt in those meetings. The substance of the meetings is critical to women. It is critical also to maintenance and support payments. I wanted to draw that to the attention of the committee for this reason.

It is expected that the likely outcome of those meetings will be for a presumption of shared parental responsibility, which sounds fine on the surface, but you do not have to dig very far to see that the consequences of adopting that as a starting point for people who are separating and divorced will be extreme and serious for the mothers of children who will be faced with a situation where, although decisions were impossible to be reached between the parties before divorce, which is why most often they are being divorced, those kinds of decisions will now be required to be made with negotiation with the partner, that is the father of the children. So everything from choice of school, to medical treatment, to how you cross the street will now be the subject of veto or other input from a father who may not have been very helpful in the past.

* (10:10)

Included in the decisions that will be affected severely by such legislation will be decisions around maintenance and support. These pieces of legislation of yours come at a time that is very important for women, and this is why: We feel that what is happening under the Divorce Act represents a serious backlash. We think that it is a response to a very severe and powerful lobby by some fathers who may, or may not, have had bad decisions made in their cases, but in any case, who have certainly an axe to grind and have certainly received the media spotlight and, as a result of that, have skewed the perception of the public and, I think, of governments as to what the realities of marriage and separation are for most women.

Most women are the primary caregivers of children. Most women do have the custody of children after divorce. Most women, large numbers of women, live in poverty as a result of their separations, and that is why you are moving at this time to do something about that. I think it is an important response at this time because other levels of government are moving in a different direction.

It is clear from what we see of the direction that these amendments to the Divorce Act are taking that it will be possible for fathers, in many cases, to reduce severely their support to children, even to zero. Such things are being contemplated as access. If it is expensive for the fathers to pay to fly children to attend at access, those kinds of amounts of money will be deducted directly from their support payments. This could easily reduce to zero support payments in many, many cases. Those are the kinds of things that are happening right now.

I just wanted to draw to the committee's attention, and just for your information and edification, some of the statistics that StatsCan has produced in the last while which, I think, fly in the face of some of the more outrageous statements which are being made across the country in respect of the imbalance and the inequities within marriage and the position of women within marriage and on separation.

Women on separation, on average, have their standards of living reduced by 23 percent. Men's standards of living rise on average by 10 percent. That is for the average. If you look at women who are living alone with their children, and that is who we are talking about here, within the first year the reduction in their standard of living is going to be 31 percent, while the men's will rise by 21 percent. Something is very wrong with that situation.

I think this Government has recognized that there is a problem here, and that it needs to be addressed. While your Government is prepared to assist through social assistance and other programs, clearly, there is an obligation and a responsibility here on fathers to be doing their part as well. I see your legislation is going a great distance to rectify some of the problems that women, who are not in an advantage in pursuing their legal remedies in these cases–in assisting them to make recovery through the bureaucracy, which will, in fact, take a lot of the responsibility from their hands, and be able now

to have the technical means to go after those fathers who simply will not pay.

StatsCan has pointed out too–I am trying to find the number of delinquent accounts when the court is required to order payments. In other words, when the couple is unable to decide between themselves what an appropriate support payment might be, so when you have the court mandating support payments, 31 percent of all of those cases have payments in arrears for at least six months. Now a lag time of six months for a single mother living with children in a situation of poverty is an extreme problem, and the recovery of those losses takes a very long time under the systems that are generally in play across the country.

Once again, your efforts to tighten things up, tighten up the mechanisms that you have to clarify what those are, to go the extra mile, to doing things like piercing the corporate veil, which is such a standard ruse for people to use to avoid their responsibilities to their children, are just very important at this time. Your efforts, as well, to try to keep the paying parent, who is, of course, in almost all cases the father, from dissipating assets is very timely and very important–the ability to register under the Personal Property Registry. Those have been the kinds of frustrations that women have been facing over the past many years and now will be able to turn to the available mechanisms within the government system to help them retain their share of those assets and, also, to enforce the payment of support orders that courts have made in favour of their children.

I just want to conclude by saying that what I am seeing over the last 15 to 20 years, I think, is a serious state of backlash. I think equality-seeking groups, in general, are suffering under this, and I think women's groups, in particular, are. Manitoba has a demographic which is a little different from other provinces as well, and so your efforts here are even more important to us. This is because we have a large number of women in categories where the poverty is going to be deeper, and there will be a larger average number of women living in poverty. Those are women of Aboriginal background, women who suffer with disabilities, and immigrant women. All of those women are at an extraordinary double disadvantage and, I think this again, this effort by your Government is a tremendous effort in the right direction to enforcing that support orders be paid in full, on time, and across provincial borders.

I want to thank you for that and tell you that the women I work with wish to thank you, as well, wish you to take into consideration some of the other things that I have been talking about because they are coming down the pike in the future. I hope to have an opportunity to address you if we get to that stage at some time in the future. I think those are the comments that I have, subject to any questions that you might have.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Thank you very much, Paula, for presenting, and we certainly welcome your support for the provisions in the bill. I just have to comment. I am so glad that your voice is being heard today, because, I suppose this is perhaps odd coming from Government, but I am very concerned about the state of the collective voice of women in Manitoba right now.

There were two organizations that, over the last number of years, have spoken very loudly on the issues of maintenance and poverty. Often women, as you know, have to choose between abuse and poverty, and it cannot be that way. Whether it is the coalition opposing violence against women–and there was another organization specifically focussed on improving the maintenance enforcement system that has either disbanded or disappeared, so your voice is very important. The Manitoba Action Committee on the Status of Women I have not heard from lately, either, and these issues are as important, if not more important, than at any other time.

So thank you very much for coming. We have some high expectations about this legislation and, as well, the other bill with regard to breaking the barriers.

You know, we had an experience, actually, a recent one, and this is part of a pattern, but the chair of the committee, actually, a constituent of Doug's, that there was a debtor, a payor, who was in arrears to his family and contracted with the Province of Manitoba by way of incorpo-

ration, a single individual as a consultant, and the maintenance program could not garnish the money that another arm of the province was paying to him because he was incorporated. It just shows you how unfortunate the current law is and why it must be changed. Thank you, but I will also just leave this with you as a question. If you do have further suggestions for improvements to maintenance enforcement, please pass them on as soon as is convenient. We do not want this bill to be our only statement on strengthening maintenance and support payment collection in Manitoba, in the course of this mandate even.

* (10:20)

Ms. Mallea: I want to comment quickly that part of the silence, resounding silence sometimes, that you are hearing from what used to be very active women's groups in the province, is a direct result of underfunding, often at the federal level, MACSOW in particular, the Manitoba Action Committee on the Status of Women. We were forced, in Brandon, where we were very active, to disband after many, many years because we simply could not function under the funding formulas that were being imposed on us from the federal level.

A lot of those women are active now in strictly volunteer groups, which MACSOW essentially was at that time. They just do not have the resources to be coming up here. I am just one of the ones that is lucky enough to be able to make a day of it, and come here to just encourage you to continue along these lines.

I think my paper mentions one other area. A suggestion was made, I noticed in Hansard, for example, with respect to serving documents upon delinquent fathers, and that might be that something other than registered mail–anybody knows when they get a piece of registered mail and they are in a situation where they owe under one of these, just to ignore it. That is so easy then to say, and it is so hard to prove that someone is actively trying to evade service of these documents. Perhaps the sheriff should be called in. Perhaps there is a better, more direct way of accomplishing the result. Those are the kinds of things that can hold things up for months and months.

I heard David Northcott interviewed the other day, saying that he is speaking to women now, many, not one, but many, who are eating one meal a day so that their children can have three. Now that is a total disgrace. Largely responsible for that will be the people who most directly owe a responsibility to those children. I think you are doing a lot to pursue those people.

Mr. Chairperson: Thank you for your presentation.

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act (2)

Mr. Chairperson: The next presenter will be on Bill 33, Mr. Josh Weinstein, representing the Manitoba Association of Rights and Liberties. Please proceed.

Mr. Josh Weinstein (Manitoba Association of Rights and Liberties): Good morning to the honourable Minister of Justice and honourable committee members. As you have heard, I am here on behalf of the Manitoba Association of Rights and Liberties, and, as indicated in the material, as I actually indicated last year when I was here to speak on the first part of this bill, we applaud efforts to combat the dangers of drunk drivers on the road of crimes involving vehicles and crime in general. But the position of MARL is that this not be done at the undue expense of individual rights as guaranteed by the Charter.

As you can see from my paper I have submitted, it really sort of breaks down into three areas, and I intend for my presentation to be brief. I first want to deal with one of the areas and that is the liability of forfeiture, and it is enumerated for certain types of offences that vehicles can be forfeited. Now, as a general principle, MARL does not have a problem with that, but I want to paint a scenario for you which is indicated in the first point that I have.

The bill talks about a user of the vehicle who is an owner and also recourse for an owner of a vehicle who was not using it. But what do you do about the user of the vehicle who is a non-owner? I will give you a scenario of them. You have a vehicle that is registered to, let us say, in a couple to the husband, and they have a

specially modified van that drives their disabled daughter around. That is really the only family vehicle that they have.

Ms. Linda Asper, Acting Chairperson, in the Chair

The father goes out, commits an offence, comes under the section. The vehicle is liable for forfeiture, and there is no recourse in the act with respect to a non-owner who is a user of that vehicle, but was not using it at the time. There is recourse for someone who did own it, did not know at the time that that vehicle would be used in the commission of an offence. Now that presents a lot of difficulties if, even in the act, no procedure is enunciated in terms of at least allowing some discretion, whether it is in front of the magistrate or a provincial court judge, to ask for the release of that vehicle.

With respect to the issue of forfeiture in general, you have a situation where you have a family that owns a vehicle that is not worth very much. The vehicle is then liable for forfeiture. It is forfeited. You have someone who obviously is of better financial means. Their vehicle is forfeited. It is just a matter of them getting another vehicle. This is a lot different than a scenario where, if you were in court and you had to deal with the issue of, let us say, payment of fines and you were able to indicate that your client is not of sufficient means to pay a large fine, but they can pay a small fine. It punishes them almost just the same because they are of little financial means, but in this situation it does not make any distinction between those two parties.

The other issue is with respect to the liability of forfeitures in section 242.3(3). That deals with the term which is, I believe it is, if you committed these offences, and I will just turn to that. If you see in the second part of the subsection, it deals with "the alleged offender has committed two or more offences under the provisions mentioned in this subsection and subsection (2)." I do not know what the intention of this Government is with respect to this legislation, but surely it should be that if you have been convicted of the offence–because there may be situations where someone has committed an offence, received a discharge by the court, which is not a conviction, and technically under this act they would still fall under it.

My submission on that point is that if a judge is willing to recognize the uniqueness of a situation to grant a discharge in the circumstances, that a person does not come away with a conviction with respect to that offence, then I say that so should that person receive the benefit under this legislation.

My suggestion would be that the words, instead of "has committed," be changed to "has been convicted of two or more," et cetera, and reading the rest of the section.

You see there are two sections and there may be other sections in the act which refer to going back in the previous 5 or the previous 10 years if you have been convicted of any number of these offences. Specifically you can look at sections 242.3(3), 264(1.1).

I would submit it goes without saying, but so that it is clear that when looking back into an accused's past or someone who is coming under this legislation, the offence must arise out of a set of circumstances on a date which is past the passing of this legislation, because the main part of the criminal law, and I would submit of administrative consequences, is knowing the peril that you face.

In 1998, someone who may have been convicted of a driver impaired, drives over 0.08, would not have known about this legislation and then later on suffers the consequences of it. On that point, whether it is enunciated in the legislation, or we make it, the facts surrounding the offence must arise on the date that is subsequent to the date of the passing of this legislation.

* (10:30)

I do want to deal with the automatic suspension provisions. I want to say, at the outset, that there are situations and combinations within this section, I guess it is 264(1.1), and also the preceding sections indicating the distinction between category (a) and category (b) offences.

You have a situation where I can only submit on the point of lifetime suspensions that

it is the position of MARL they constitute cruel and unusual punishment. I recognize that it may not be the intention, and that the position of the honourable Minister of Justice (Mr. Mackintosh) may be that these are administrative consequences, that there is not the intention to punish. But just on that point, you can know punishment when you see it in an automatic lifetime suspension. The only thing one can glean from that is it is, essentially, punishment. It is, with the greatest of respect, excessive.

There are provisions, with respect to certain offences under the Criminal Code, which already allow for a judge to have discretion in terms of imposing prohibitions by the court. They may range up to three years when there is no bodily harm; up to ten years when there is bodily harm, and MARL's position is that that be left to the discretion of the sentencing judge.

The other point on that is: I want to give you an example of a situation which creates an unfair result, but certainly is plausible under this scheme proposed in the legislation. You have an individual, and we will take this into the future at a point, let us say, of 2003. You have an individual who, on one night, is stupid enough to commit four acts of mischief on a vehicle. Because they have committed the four acts of mischief to a vehicle, they come under that scheme which says that four or more of a category (a) offence gets you a lifetime suspension. You can see under category (a) offence, that is on sub-subsection 8, this is typically called "spree crime," going and doing this all in one night. That is a lifetime suspension, because, under the scheme, that is four or more. You have an individual who, in 2003, commits one offence; in 2004, commits another; 2005, commits another; 2006, commits another.

So it is every year that individual is involved in crime, and it shows this repeated conduct of this individual. The law makes no distinction. The legislation makes no distinction between those two, and the question is: Should they be treated the same, in terms of administrative consequences?

By this legislation it does, and I would submit, without guessing too much on this point, that if you were before a court of law on that point, a judge would be able to draw a distinction between the two, and certainly the argument could be made that these are not the identical types of situations. As stated here, to that extent, the provisions treat dissimilar offences and dissimilar offenders in identical fashion.

The last area I wanted to cover is that with respect to the Licence Suspension Appeal Board, and this is largely with respect to the provisions regarding the ignition interlock device. In those provisions that are stated there, sections 279(4.1) and 279(12.1), if any part of a suspension is revoked, whether in whole or in part, that the Licence Suspension Appeal Board, before they consider that revocation, should consult with the registrar before deciding on that to determine whether it is in the public interest or public safety concern.

Mr. Chairperson in the Chair

Well, I am submitting on that point. The legislation creates a board who is trusted to make decisions and is given that discretion. Now legislation says, well, we are going to give you the discretion, but we are actually going to also have to ask you to talk to the registrar and consult with him first and then come back and make the decision. My question is then: Why are you giving discretion to the Licence Suspension Appeal Board, who really does not have discretion and still has to consult with the registrar? I submit on that point it should be left entirely with the Licence Suspension Appeal Board, and, if anything, having the requirement of their consulting with the registrar is a fettering of their discretion.

Subject to any questions you may have, that is my submission.

Mr. Chairperson: Thank you for your presentation.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Well, thanks very much, Josh, and I commend you for going through the labyrinth of this bill and doing all your cross-references so well. Of course, every year we meet, you and I, at the committee here talking about the impaired driving initiatives. I

do not know if we can do this next year, because this is a big one. Thanks very much for your insights and your critique.

In terms of the non-owner who is driving a vehicle, is it your reading of the legislation, however, that there is no impoundment, actually, in that circumstance, in other words the vehicle is not taken from the real owner at that juncture?

Mr. Weinstein: That is right, at that juncture. It is liable to forfeiture under the provisions that require notice. The question is: Where is the recourse enunciated in the legislation which allows for someone who is a non-owner user to at least come in at any point and interject to try and deal with the issue of the forfeiture of the vehicle?

Mr. Mackintosh: How do you see the posting of the bond provision then being able to be the release valve on that?

Mr. Weinstein: To the section.

Mr. Chairperson: I am sorry. Could you repeat your answer?

Mr. Weinstein: I am just wanting to know which section you are referring to.

Mr. Mackintosh: The section, (15), sections that allow for an owner, if they want release of a vehicle from forfeiture, they can go by way of the bond posted.

Mr. Weinstein: Well, with respect to the bond that is posted, with respect to those provisions, it may still provide at that point for the release, but I think that there are going to be situations where, I do not know, in terms of assessing whether the bond is sufficient, that there should be at least provisions that allow you, the same provisions that are indicated for an owner of the vehicle that was not using it at the time could easily have a section dealing with a user of the vehicle who is a non-owner and give them that same protection with respect to the sections. They could almost read identically the same, that they did not know that the owner who was using it at the time was going to use it in the commission of the offence and it is required for, let us say, compassionate reasons or it would cause undue hardship, which is the language that is used already in The Highway Traffic Act with respect to the Licence Suspension Appeal Board for someone to be able to get their vehicle back.

Mr. Mackintosh: Just on terms of the forfeiture, whether it affects the wealthy less than the poor, I guess were your comments. Of course, the forfeiture provisions only apply in the most extreme cases of risk to the public, danger to the public lives of Manitobans. Your argument, I suppose there, is that if you have a big, expensive car and you are poor, I can see your argument perhaps, but there is a public safety issue here and obviously the focus is to take away the vehicle which is essentially being used as a weapon. So it is blind to that. It is just that the argument does depend on the value of the vehicle. Is that a fair assessment of your argument there?

* (10:40)

Mr. Weinstein: It requires you on one level to accept that this is a form of punishment. If that is not accepted, which I do not think it is by the Minister of Justice, that it is just an administrative consequence, then I would have to agree with you. In terms of that type of act, and we have seen this before in terms of forfeiting the vehicles when first dealt with in terms of the johns and the prostitution, those provisions we had seen in the circumstances that there are provisions already in a court in terms of how one is sentenced and this may not be imposed.

Mr. Mackintosh: This will be my final question, or maybe it is just a comment, an answer. In terms of the offences from previous years before the enactment and implementation of this legislation, it was our considered view that it is important to consider the risk of someone to the public, and that is the focus of the legislation. Indeed it is not seen as punishment. It is not here to make someone feel bad about what they have done, although there may be some deterrent value that comes from it, but the focus here is simply to protect the public in getting these people off the road. So I do not want to deem that the world begins on the passage of the bill and we will only start to count those serious infractions that happen from that point forward. That was the idea of allowing for

look-back. This is about risk management. This is about lives. So that was what was behind it, Josh.

Those are my comments, and if you have anything further, I would certainly welcome that either now or at any other time.

Mr. Chairperson: Excuse me. We have reached our time limit. Is there leave for the presenter to reply and for Mr. Praznik to ask a couple of questions?

Some Honourable Members: Leave.

Mr. Weinstein: Just on that last point. I can see the minister's point with respect to the issue of risk. We could remove a lot of risk if we locked everyone up at night and kept them in their homes and not have them drive. So the question is: At what expense do you do it? The submission of MARL is that it is an undue expense to impose those types of provisions when they have to look back to a period when that individual did not know, not about punishment but even that there was administrative consequences would be following, because you have to know the peril you face so that you can be guided in terms of conducting yourself properly and avoiding risk.

But these types of provisions have the effect of suddenly one person gets a conviction after this bill is passed, and then they start going backwards, and then they look and the individual is going to throw their hands up and say: I did not know, and perhaps if I would have known I would have maybe even have thought twice. Maybe not done it, but I would have at least thought twice.

Mr. Darren Praznik (Lac du Bonnet): I just want to say I very much enjoyed your presentation. I know we certainly are interested in some of the recommendations you are putting forward and ensuring that the minister and the Government give consideration to them in this bill.

I am particularly interested in your comments with respect to a provision for third-party individual may not be the owner of a vehicle. I think you referenced the situation where an individual may be suffering from a disability, a vehicle is required for their transportation and it may not be in their name for a host of reasons within a family setting. Your reading the bill now provides no real mechanism for that to be taken into account in an appeal where somebody, whether it be a judge or be the registrar or be some individual who would have the discretion in those circumstances to allow the vehicle not to be forfeited. Maybe the offending driver, of course, would probably be in a predicament where they would not be able to drive anyway. But that would be your recommendation to provide for some type of discretion in those circumstances?

Mr. Weinstein.: Yes, thank you.

Mr. Praznik: In your reading of the bill, just to confirm this, it has no such discretion in it currently. So to reject any type of amendment would mean we would have boxed those circumstances in where the vehicle would be forfeited without consideration to third parties.

Mr. Weinstein: I say it does not have any clear provisions. It may be able to be done through what the Minister of Justice (Mr. Mackintosh) has talked about, the bond provisions, but I do not think that that is a sufficient section to address what might be even an immediate need to have that vehicle returned.

Mr. Praznik: Just so government members of the committee fully appreciate your argument, because I think we would hope that they would entertain an amendment or make one themselves, perhaps, or have the Attorney General (Mr. Mackintosh) make one himself, it would be your recommendation, I take it, that having such a provision clearly in the act so that in those very rare circumstances where this arises there would not be a question as to whether it could be done or not, but an individual could look at the act, find that method of appeal in those circumstances, and make application under it to an appropriate party to exercise that discretion. Would that be your organization's recommendation, that that is probably the best way to ensure that protection as opposed to the somewhat convoluted method recommended by the minister?

Mr. Weinstein: Yes.

Mr. Chairperson: Thank you for your presentation.

Bill 35–The Improved Enforcement of Support Payments (Various Acts Amended) Act

Mr. Chairperson: The next presenter is on Bill 35, The Improved Enforcement of Support Payments (Various Acts Amended) Act, Mr. John Stefaniuk, representing the Canadian Bankers Association.

Mr. John Stefaniuk (Canadian Bankers Association): Good morning, Mr. Chairman. My name is John Stefaniuk. I am here representing the Canadian Bankers Association in relation to Bill 35. The concerns of the Canadian Bankers Association, I believe, are quite narrow and relate specifically only to two portions of the proposed bill. Those would be found on pages 11 and 12 of the published bill that I have, section 13 of the bill, and proposed sections 59.4(3) and 59.4(5) of the proposed legislation.

First, I wish to make it clear that the Canadian Bankers Association certainly takes no issue with the initiatives intended to improve the availability of enforcement mechanisms of maintenance orders. That is a laudable objective of this Government. The issue we have is in relation to specifically how those enforcement objectives are met and the interrelationship of the bill with The Personal Property Security Act.

Section 59.4(3)(a) of the proposed legislation would provide that unpaid maintenance obligations are a lien, and, upon registration of a financing statement, are deemed to create a security interest. The Bankers Association has no issue with that concept. In paragraph (b), however, of section 59.4(3), the legislation deems that the security interest is perfected on the day that the maintenance was due. This gives rise to a retroactive effect, which is contrary to the principles that we have in The Personal Property Security Act.

Then 59.4(5), which is on page 12 of the published bill that I have, gives that lien a super priority over all other private, registered security interests in the assets of the debtor, other than those that are referred to as purchase money security interests, or, in the financial community, as PMSIs for short. The first issue is the retroactivity of the lien in that it covers all past arrears, and is deemed to be perfected when those arrears were due. This concept effectively results in a retroactive priority of the legislation ahead of other properly registered security interests. This concept of retroactivity is completely contrary to the precepts under which the Personal Property Registry system works in The Personal Property Security Act.

* (10:50)

Now, the Personal Property Security Registry system is a system that is in place in virtually every jurisdiction in Canada. It operates under a system of notice, so that anyone who might be a lender, and wish to take a security interest, security over collateral, that is personal property as opposed to land, will be able to look in the registry and identify the nature of claims that exist against the individual to whom funds were being loaned.

With this legislation and these two specific provisions, that concept of certainty and security and reliability of the Personal Property Registry system is unfortunately undermined. Again, the CBA supports the concept of being able to register a notice of the existence of a maintenance agreement. We do not have any issue with that. Registering notice of arrears, and having those arrears have priority as of the date of registration, there is no qualm with that. But it is only in relation to the creation of a super priority and a retroactive effect, under those two specific provisions, that gives rise to concern. Because that has the effect of basically moving the value of a private asset from one group of citizens, lenders, and putting it in the hands of another group without any form of compensation, and, really, without any effect of ability to anticipate the existence of these claims and to deal with them in some fashion.

There is an exception for purchase money security interests, or PMSIs. That is a very narrow kind of lending arrangement. That is when specific money is given to a specific person to purchase a specific asset. Take a car loan as a good example. Those would continue to have priority of registration. But take, for

example, someone who has a mom and pop business, and has a line of credit with the bank. The bank will issue loans, take security interests over all the personal property of those individuals. The bank, or other lender, is not going to be aware of a family breakdown, may not be aware of maintenance obligations, and yet the security becomes undermined to the extent that, even if the security happens to be in assets that relate to a business, it is undermined because of this prospect of super priority for these arrears.

The same would apply if a business was incorporated, and there was a personal guarantee that was secured, by way of a security agreement over personal assets. The concept of security and registrations goes well beyond situations where you have an individual who is mortgaging their personal assets to the hilt, or spending to beat the band. It affects a whole wide range of relationships, and this operates to the detriment of individuals who are going to be seeking credit, and it undermines the security of the financing registration system.

Now the Government of Manitoba has, in the past, in relation to tax lien priority, had ongoing discussions and consultations with the Canadian Bankers Association and other groups representing lenders and financial institutions. It does not appear that the consultation took place in relation to this bill, and the CBA was a bit caught by surprise in finding this in the legislation, hence a very short opportunity to be able to make its views known to Government.

This issue, in terms of this bill, can easily be addressed by taking out the two provisions, being 59.4(3)(b) and 59.4(5). With (5) being taken out, there is probably no need for 59.4(6). The issue can be addressed by allowing the registration of the security interest and its perfection in the ordinary course, which would be clear for everyone searching the register to establish what the obligations of that individual was going in and which would not affect the prior security interest there already in place.

It is certainly open to the Legislature to provide, generally, for the registration of notice of the existence of these orders or agreements; so that appropriate inquiries can be made as to the status of the maintenance payments, so that a lender going into a lending relationship could establish whether or not there were arrears. The unfortunate effect of this bill and those two sections would be to grant a super priority, and undermine pre-existing credit arrangements and security to the detriment of lenders who hold the security and who have issued these loans.

In short and in summary, on the second page of the CBA's written submission, I will just quote from it: "We agree that a person entitled to maintenance arrears should be allowed to file a financing statement in the Personal Property Registry and have a deemed security interest. However, the rules for perfection and priority as outlined in The Personal Property Security Act should govern this security interest. This is fundamental to the systems of secured lending in place for both consumer and business credit."

I add to that that this is a consistent approach that applies throughout the country and that there are uniform conventions that are being established throughout Canada to standardize personal property security legislation and the way in which it operates. This well-meaning initiative has the unintended effect of undermining those sorts of efforts that are in place throughout the country.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Thanks, John. I guess I will just say at the outset that we recognize that there may be certain areas of public policy where we think we can justify exceptions to the PPSA regime. We just think that the most important debt owing is a debt owing by a parent to a child. So the intent, when we started this journey that ended with this bill, was to look to see how much of a priority we could give to arrears. According to the advice of those that deal with these matters, there was certainly a strong recommendation that this is where we should go. I still scratch my head wondering if we could go further, but I recognize that you are dealing with mortgage securities and so on. It certainly would be a change in the way that debts are dealt with and are prioritized.

I will just say this, though, we do this with wages right now under provincial law, I understand. So it is not the first time that this kind of

regime is introduced. I know the department does take issue with the analysis presented by the CBA. Perhaps if I could offer staff to meet with you, John, and we can share our analysis of the regime with you. But we certainly will consider your remarks in the context of this bill's development. I have asked staff if they could make an arrangement now. Either you can meet now, or later today, or whatever, if that is all right with you. I will leave that with you.

* (11:00)

Mr. Stefaniuk: I appreciate that, Mr. Minister. In reference to your comments with mortgages, too, the Government has expressed some concern, or has not dealt with the issue of priority in relation to mortgages. These security interests, as you know, are no different than mortgages. They used to be, in most cases, called chattel mortgages, because they equate a security interest in personal property.

But the issue is the same, whether it is mortgages as we know them affecting land, or mortgages in the sense of security interests affecting personal property. I suppose that if the Government considers it appropriate to examine issues perceived more gradually, or in a considered approach in relation to real property mortgages, that level of concern should apply equally to security interests registered in the Personal Property Security Registry.

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, my question is just as much for the minister, I guess, more so than the presenter. If I understand this correctly, the minister is asking our presenter to meet with his staff to determine whether or not the concerns are met under the current bill, or to appreciate that there may be some additional difficulties that were not anticipated in the bill. Perhaps the minister would just give me a–

Mr. Chairperson: Normally, you could ask questions at the beginning of the bill, but, by leave, the minister can answer.

Mr. Mackintosh: The concern expressed by Mr. Stefaniuk was one that was relayed to us earlier in writing, and the legal opinion was sought in the department, so there is a difference of legal opinion and approach. So I just thought it might be worthwhile for the respective counsel to discuss their approaches on that. It is our view that this particular provision is important. It is, of course, obviously only applicable where there are arrears, where someone does not meet their obligations. That was the intention, and it will be the scope of any discussions.

Mr. Praznik: The reason I raise this is, obviously, what we are trying to do as legislators is put in place a regime. It should be clear. People should understand it, and we recognize that, in security law, it is very important that people register their security in some order, so that other people can take notice of it when they are loaning money or accepting debt from individuals and want to ensure that is secured. We also recognize, as the Attorney General has pointed out, in our law that we do provide for some priorities with respect to payment of wages. I was a former minister of Labour, and I am aware of that.

I would ask the presenter, Mr. Chair, obviously, we have two legal opinions. The position of this organization is that this bill does create a securities difficulty, a big question mark for people accepting security. Would it be more acceptable, and provide greater certainty, if there was a limitation on the amount of unsecured, or of arrears, some limitation? We know with payment of wages, that wages do not go on for years without people being paid. Sometimes that does happen in child support, so there would be at least some security to know what the limit would be. Would that be a possible way of providing a little bit more certainty in the process?

Mr. Stefaniuk: That is an interesting concept, and I do not know if that has been pursued by the Canadian Bankers Association, which you referred to as the six months of wages that is typically the maximum that there is ability to claim for. That may be an issue. I do not know if it addresses the fairness issues, in terms of the person who is owed the support. I cannot speak to that.

I think the issue is really one of priority and certainty. With unpaid wages claims it is often relatively easy for a creditor to determine what

the status of unpaid wages claims may be by simply contacting the Province and determining that issue. That can be done by writing to the department to find out whether there are unpaid wages claims with the consent of the party in finding out what those are.

A far preferable approach I think would be to, even at the outset, whether there be arrears or none, allow the registration of notice of the existence of a maintenance order or maintenance agreement in the Personal Property Registry so that everyone can be aware of it, that priority can be established as of the date of registration if need be. Anyone who is looking to lend funds could check the Personal Property Registry by doing a simple search, see that there is the existence of a maintenance order or maintenance agreement, and make appropriate inquires as to whether or not there are arrears, and, having satisfied themselves as to the status of the order or agreement, then be in a position to know whether or not the person is creditworthy and rely on that basis and then take the necessary steps to maintain vigilance to ensure that there is no default. As it stands right now, you can have an existing credit relationship and be completely unaware of any marital breakdown or the fact that maintenance obligations arise in some way and then have your security put at peril.

Mr. Chairperson: We have passed our time limit. Is there leave for Mr. Praznik and the minister to ask questions? *[Agreed]*

Mr. Praznik: Just for all members of the committee to be clear, the real issue here is ensuring that the potential liability, and I take it it is even expanded, the potential of liability is available so that every potential creditor and individual can take notice and secure for themselves the knowledge as to whether or not the liabilities or the debt that they are going to be holding is in fact going to be repayable. We are not talking about thwarting the ability to collect. You are really talking about ensuring that there is proper notice to the world so third parties can govern their affairs accordingly where there is a maintenance agreement or order.

Mr. Stefaniuk: That is absolutely correct, Mr. Praznik. On a like concern is the concept of as of when that notice is effective. It is the CBA's position that it should not affect lenders in the sense that it jumps their priority in relation to arrears which may be in place as of the date of registration of that notice. If registration is made and notice is given as to the existence of arrears, from that day forward and the ordinary priority rules apply in terms of order of registration, then there is absolutely no issue whatsoever.

Mr. Mackintosh: The essential concern is the issue of notice of arrears, as I take it, John. Aside from the act now allowing for registration in the Personal Property Registry, the information and notice about arrears can be obtained through the Maintenance Enforcement Program. In other words, like any other obligations that a person may I have, I presume the creditor would be seeking to know the financial obligations of the debtor before credit is advanced. Getting information from the Maintenance Enforcement Program is one avenue. The other one is through the credit bureau where the Maintenance Enforcement Program files records of serious arrears so there is the availability of notice we would say. I do not know if you want to respond to that.

Mr. Stefaniuk: That does not, unfortunately, address the priority issue and also the provision that deals with the perfection of the interest as of the date due. I do not know a great deal about the maintenance enforcement system itself. I probably know a lot more about The Personal Property Security Act and the registry. My understanding is that arrears can accumulate for some time before someone avails themselves of the maintenance enforcement mechanisms.

It would only be in relation to claims that had already been made and brought into the Maintenance Enforcement Program before anyone would have notice of the existence of these claims. That still would not address the priority concern and the fact that this would have priority over any security interest other than a PMSI interest. So, again, it would be preferable to have perhaps notice of the existence of an order or agreement and that appropriate inquiries could be made not only of maintenance enforcement but also of the individual who is entitled to receive the maintenance payments, so that they could be contacted and asked to acknowledge whether or not there were arrears outstanding

and appropriate inquiry could be made on that basis.

* (11:10)

Mr. Praznik: Just one final question. This exchange that we are having with the presenter: I am getting the very strong impression that your recommendation is that in order to secure that interest, any agreement order, whether there are arrears or not, should be filed in the Personal Property Security as part of The Personal Property Security Act, filed with the registry and give notice to all the world that this is a matter that should be checked. An individual should be checked because it is an obligation owed. If it is not in arrears, that is great. The notice is there to all potential creditors. So really the trigger you are looking for is making the registry such that any maintenance order or agreement, in order to secure its priority, would have to be filed with the personal property security index just as a matter of course. Then that would basically give notice to world. That would be your organization's recommendation?

Mr. Stefaniuk: I do not know that I can say that it would be a recommendation and that would be up to the Government to determine where to pursue, but it would certainly be in our submission a preferable approach to provide the level of certainty that would desirable. It could be left to the parties, to any agreement or order, to decide whether or not they wished to register. If they do register, then they secure their priority should arrears arise.

Mr. Chairperson: Thank you for your presentation. Is there leave of the committee for a committee substitution? Is there leave for a substitution? *[Agreed]*

Committee Substitution

Ms. Nancy Allan (St. Vital): With leave of the committee, I would make the following membership substitutions effective immediately for the Standing Committee on Law Amendments: Bonnie Korzeniowski, St. James, for the Honourable Mr. Ron Lemieux.

Mr. Chairperson: It has been moved, with leave, to make the following membership substitution, effective immediately, for the Standing Committee on Law Amendments: Korzeniowski for Lemieux. *[Agreed]*

Bill 46–The Provincial Court Amendment and Court of Queen's Bench Amendment Act

Mr. Chairperson: The next bill is No. 46, The Provincial Court Amendment and Court of Queen's Bench Amendment Act. The presenters are Mr. Tonn and Ms. Giesbrecht. Please come forward. Please proceed, Mr. Tonn.

Mr. Robb Tonn (Provincial Judges Association of Manitoba): With me is the honourable Judge Linda Giesbrecht, as you noted. She is not intending to make an oral presentation, but will be available to answer questions if there are some questions that the committee wishes to direct to her rather than to me.

We circulated a paper outlining some of our suggestions in relation to the legislation. So while that is being distributed and some other things, let me just say, at the outset, that we are here in support of this legislation generally. We certainly have suggestions that we think will improve it, but I want to place on the record that this is a very definite step forward. Unfortunately, the situation across Canada, particularly with provincial jurisdictions and the means for establishing judicial compensation, had a colourful and litigious pattern over the last decade.

I, personally, was just reflecting on the fact that my file on this matter opened in the spring of 1994, and I have not been able to close it yet. One of the problems has been that there has been a lack of time limits in relation to the way in which the process has gone forward. There has been a great degree of politicization of the process by having frequent matters of discussion in the House. It appears that this Government has seen the wisdom of moving forward to further depoliticize that process, and to set up some rules. We are grateful for that. I also want to point out publicly that the minister undertook some prior consultations with the association in order to give us an opportunity to have some input in relation to the legislation. That is the type of co-operative relationship that there ought to be between these two branches of government. So we wish to recognize that.

We have 10 points, the last 5 are really questions of clarification. The first 5 are more of substance and are placed in order of priority. Let me address, at the beginning, topic No. 1, the introduction of term limits for administrative positions on the court. We urge the introduction of these limits most strongly. I should say Manitoba is the last province to introduce term limits for these administrative positions. The wisdom of this has been seen across the country.

In fact, it is not only in relation to judicial positions that this has been acknowledged, but it also applies academically. Deans used to be there for life. I use academics, because we understand the concept of security of tenure with respect to academics and the exercise of academic freedom. While that is not precisely equal to the way in which one considers these things with the judiciary, it has been recognized that while those rights attain, in order to continue to have the introduction of fresh ideas, the ability for the academic department and faculty to function collectively in terms of bringing the knowledge of all of its members, then what you do is, yes, you get tenure as a professor for the length of your term.

But, as a dean or as a department head, you step up, you take your turn as dean or department head for a term or perhaps a second term, and then there is renewal. This kind of thing happens without acrimony. It is a normal part of the process.

The criticism we have, in relation to the introduction of the term limits, is that they do not apply now. I can tell the association strongly supports the introduction of the limits now, making them applicable to the existing members of the court in administrative positions. The resolution in relation to that was passed in December. There have been subsequent resolutions that confirm, without dissent, that this is something that should go forward.

The chief judge is 55. The associate chief judges are 52 and 50, respectively. The chief judge has been there more than seven years. The 52-year-old associate chief has been there more than seven years. the Honourable Judge Win Norton is 80, and he is on the bench. You may be, if you pass this legislation unamended from our suggestion, indeed, preventing this change from taking place for up to three decades.

* (11:20)

Refreshment is needed now. I believe that the Government sees the wisdom of refreshment, because they have introduced it. But what I am suggesting is to not introduce an unnecessary obstacle to allowing that to occur. Terms have been introduced in other jurisdictions that affect current incumbents, and it is the view of the association that the introduction of having an effect on the incumbents, as long as their salary is protected by a grandfathering, will not be any interference with judicial independence. Because the tenure remains as a judge, and the financial security remains as a chief or an associate chief judge. It is a small price to pay for being able to introduce that now. This is very, very strongly endorsed by the court, and I ask for the very, very serious consideration of this committee to that request. Let us not forget, as well, with respect to the question of tenure. This is something that is requested by the bench itself. This is not something that is being unilaterally imposed by the Government, if you introduce it in a way to make it effective now.

Let me talk now about the issue of the JCC report, the Judicial Compensation Committee report, in the process. I have a couple of points on that: One being the business of the binding nature, and another one, years of comparison. I have actually revised that position overnight.

Well, I did some checking, and I am sure that, perhaps, I can bring some information that the department has not really been able to look at, just in the way in which the formula works. The way in which the formula is supposed to work is: The recommendations of the committee are to be binding, if they do not exceed a designated average for the three provinces of New Brunswick, Nova Scotia and Saskatchewan, which the Government has indicated they believe to be the three most appropriate comparisons.

The problem is this: Under our legislation, our first JCC would start in 2002, would be appointed the beginning of next year, because

the current tribunal is for 2000 and 2001. So it would start in 2002 for 2002, 2003 and 2004. It will be appointed early in the year. It must report within six months, 180 days to report. At that point it is supposed to compare the Saskatchewan figure, the New Brunswick figure and the Nova Scotia figure. Now, they will not know the Saskatchewan figure, because the Saskatchewan figure right now, the tribunal in Saskatchewan, I want to get that right, we will not know the Saskatchewan recommendations for April 1, 2003, until the end of 2002, after ours has reported. The Saskatchewan salary, of course, will be for part of the year.

Nova Scotia, although their legislation says it should be once every year, they actually are doing it on a triennial basis. We will know, hopefully, by late 2001 what the Nova Scotia figure is for 2002. In New Brunswick we will definitely know what the salary is for the year 2002 by the time the committee works. The problem is that you may not effectively know what the Saskatchewan average is. The other thing that happens is that that winds up tracking you back several years, because, for example, the Saskatchewan figure is binding provided that it does not exceed a national average. But the national average that applies to Saskatchewan currently was set in 2000. So we could be, in 2003, looking effectively to levels that were established in 2000 for determining what is binding. The problem is we just deny ourselves useful information.

Let me just address the whole idea of why judicial compensation committees are so important. They are important because it is an uncomfortable debate. Judicial salaries have to be set differently than other people because of judicial independence. You do not want it to be a political football. You do not want it to be in the House all the time. Legislatures find it difficult to set their own salaries. They refer it out. So the less intrusion that you have to have into it, in terms of debate, the better. That is the idea, while recognizing the overall, ultimate authority of the Legislature to determine these things.

Prince Edward Island has adopted the national average as a matter of practicality. Why would it not? That is a province that is more have-not than New Brunswick and Nova Scotia and Saskatchewan. Saskatchewan has adopted the national average. That is the best comparator. If you are going to be able to have useful information to compare on an ongoing basis, the best chance for having up-to-date information will be if it is national average, because you will have enough provinces into the process at different times throughout that to be able to generate up-to-date information.

There is also a question, I appreciate that I may risk running into time problems here, a small problem with respect to for which years the comparisons are to be made. Manitoba says it will be binding in this legislation if, for example, the tribunal meets in 2002, as long as the designated average for 2002 is not exceeded in 2002, 2003 and 2004. So what happens is you are comparing provincial judges' salaries in Manitoba 2004 to those in other jurisdictions from two years previously. Again, it does not seem particularly wise. I urge the committee to look at that.

Let me address the issue about particularly timing, and this is critical. One of the biggest problems that we have had has been the time line in moving matters through committee. Although judicial compensation committees in Manitoba, by legislation, are supposed to be every two years, beginning in the year 1990, we have only had three. That is because what has happened is that the Legislature has delayed consideration of the report, and then delayed the appointing of the next tribunal. It is typical, Mr. Chair, for, in provincial legislation, these tribunals to be dealt with promptly. The Supreme Court has said you need definite time lines. Across the country, it is from 30 days to 90 days; from the reporting of the tribunal to the final determination by either the executive or the Legislature. Manitoba proposes 181 days and counting. It can be extended, if there is a request for clarification that would add another 30 days and the Legislature can extend beyond that. Manitoba is asking for a limit that is twice what is the longest of the other provinces. We do not object to it going to committee. We do not object to the mechanism–

Mr. Chairperson: Excuse me, Mr. Tonn, we have reached the time limit. Is there leave for the presenter to continue?

* (11:30)

An Honourable Member: How much more?

Mr. Chairperson: How much more time do you need?

Mr. Tonn: Wrap up in five minutes, if that is–

Mr. Chairperson: Leave has been granted.

Mr. Tonn: Thank you. The idea is to get it to the Legislature for its decision when it is fresh. The 181 days makes it virtually impossible that the Legislature will deal with it at the same session, or sitting, in which it is introduced. It should be dealt with at the same sitting in which it is introduced. Whether you do it by way of compressing the committee time lines, or removing the committee process and substituting something else, is obviously up to the Legislature's discretion.

Statistics. There are two areas of the report, of the legislation, that talk about using statistics that are very troubling. One relates to the statistics for selecting judges, statistics with respect to the recruitment, retention, resignation and retirement of judges. Well, it is easy with respect to retention, resignation and retirement, but it is, in fact, impossible to produce useful statistics for the recruitment because the legislation provides already that there is to be absolute confidentiality about the particulars of the applicants. So, other than knowing number of applicants, which could be completely useless because they might all be unqualified, that statistic will not be helpful without breaching the confidentiality in the recruitment process.

I am sorry, were you going to say something, Mr. Mackintosh?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): No, your turn–

Mr. Tonn: Oh, I am sorry. With respect to the annual report, and we think the annual report is a good idea, it specifies a number of statistics that ought to be provided, and the minister has referred to, here it is, I am sorry, a paper from Justice Spigelman, from New Zealand, as advocating accountability of the court in an annual report. I commend the minister for so referring. He agrees. Justice Spigelman says there ought to be accountability, but he really decries the use of statistics. If you take a look at pages 12 and 13, in particular, I am sorry, page 14, in particular, he talks about statistics being expressed targets, possibly and most likely interfering with natural justice. Performance targets are not always very useful. He says, particularly, at page 14, the requirement of open justice, in which the quality of justice is the primary consideration, cannot be measured. Those requirements, not statistics, must continue to be regarded as the basic mechanism of judicial accountability. Inefficiencies in the administration of justice in common-law countries are not unintentional. We are inefficient so that we can give persons who are accused every opportunity to represent themselves. The problem with statistics we have all heard: There are lies, damned lies, and then there are statistics. You cannot measure it that way.

If we talk about efficiency of court, we can make it much more efficient by abolishing courts in all the remote circuits, abolishing the rural courts, having it all in Winnipeg. Maybe that would obviously be statistically great and would destroy equal justice.

The other points that we have, I will refer you to my written submission, are largely for clarification. We would like recognition of the Provincial Judges Association of Manitoba as the entity to name the appointee. That is done in Saskatchewan. We think some clarifications can be made with respect to professional allowances, et cetera. Those are the very important elements that I wanted to bring to your attention. I thank you for the extension of time.

Mr. Mackintosh: Thanks, Robb. In terms of the statistics, we have just taken the view that we think the more information the better, but there still has to be obviously a weighing of the different information and the objectives of the justice system considered in light of particular pieces which may be narrow in their scope.

On the issue of the capping of the term of "Chief Judge," for example, it is our view that the capping of an incumbent raises significant constitutional concerns and certainly a risk that such a provision would be struck down by the courts on the grounds that it would violate principles relating to the independence of the

judiciary. We know that in other jurisdictions, where the capping applies to the incumbent, I understand from information that that occurs as a result of the consent of the chief judges, although there is I understand one other, where that may not have occurred. There is some speculation that the provision is likely to be tested there, but we do have that opinion on which we have based our provision.

I think too that, aside from the constitutionality question, I think there may be issues of perception as well, in terms of independence of the judiciary that have to be guarded against. I will just conclude, on the issue of the comparables, the use of the three provinces is of course only a floor. It is only a starting point. We recognize them as very important to that. I will just leave it at that.

Mr. Tonn: We respond to that with three points. With respect to regarding those levels as floors, and I appreciate and I have no doubt that you mean that very sincerely, Mr. Minister, I can tell you that in the entire history across this country of judicial compensation tribunals, government has never once, never once said that judges should get more than the tribunal recommends and in almost every circumstance have said, at least until this new round of litigation and the new rules coming in, have said it should be less.

Those aspects tend, for practical purposes, to be regarded as ceilings, not as floors, and that is a great fear that I have. Secondly, with respect to the business about–and again, I appreciate your view that there would be an interference with judicial independence. I can say unequivocally that there are other opinions. My opinion is certainly that it would not interfere with judicial independence because there are three elements to judicial independence: financial security, security of tenure and system security.

* (11:40)

With respect to the system, it is the bench that wants this changed as a whole. It does not affect that system at all. With respect to security of tenure, the tenure of the judge is unaffected, just as the tenure of a dean, as a professor is unaffected. With respect to financial security, if you put in grandfathering, that is not affected. I believe that that would survive challenge. I would urge you to reconsider the matter, and if you feel differently upon reconsideration to act on the basis of what you feel to be right, not whether or not you are worried about getting sued, because lawsuits happen all the time.

With respect to the business about the statistics, I was remiss and you reminded me in pointing out one thing. The provincial court does not have the resources currently to provide those statistics. There is no computerization in the provincial court and we understand that that has been delayed further. The Ernst & Young report with respect to the Crowns noted there was a lack of statistics in Manitoba. Manitoba is not included in the national statistics with respect to prosecutions because it does not keep track of them. The reason for that is there is a lack of computerization. So understand that if you do commit to this, it will be an ineffective commitment unless there is an additional and prompt significant expense attached by introducing the resources to do this. Consider that there is a practical and economic element to that as well. It would be inappropriate I would submit to impose an obligation and to not put the court in the position in which they can meet it. They do not even have independence over the administration of their own budget in regard to this matter; it is the Attorney General's department that does.

Mr. Chairperson: Thank you for your presentation. That concludes the list of presenters that I have before me this morning. Are there any other persons in attendance who wish to make a presentation? Seeing none, is it the will of the committee to proceed with detailed clause by clause? *[Agreed]*

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, I have had an opportunity to have a few words with the Minister of Justice (Mr. Mackintosh) and, as he is aware, our caucus has generally been supportive of the batch of bills that are coming forward, but there have been a number of issues that have been raised by presenters today. I understand some of them are issues that I expect are shared by the Attorney General.

I would suggest, with his concurrence, it may be a good time to adjourn this committee

today to give us a few days to look at the presentations. We would certainly like the opportunity to work with the Minister of Justice on some of these issues that have been raised, because there may be some amendments that are to be acceptable to both parties and would see the furtherance of this bill. On behalf of our side, we would also accommodate a speedy return to this committee when in fact we have had a chance to discuss this further. So in the interests in trying to get good legislation, I would like to make that suggestion and I hope that it would be acceptable to Government members.

Mr. Mackintosh: In the interest of the Personal Property Registry roll, with the super priority for support payments we have asked the department to look at the pros and cons of any tweaking there, for example. We could bring that in by way of Report Stage, but committee consideration may be a preferable route. The Official Opposition will, I understand, scratch their heads on a few of the aspects of the presentations, as we will on the issue of some of the impaired driving issues and so on. The House leaders can discuss this further, and look, perhaps, at a meeting at a convenient time on Tuesday, perhaps with leave of the House in the afternoon. That is one option. We will consider that further.

Mr. Chairperson: There seems to be an agreement to adjourn. The hour being 11:42, what is the will of the committee?

Committee rise.

COMMITTEE ROSE AT: 11:42 a.m.